

AMENDED IN SENATE MAY 4, 2004

SENATE BILL

No. 1453

Introduced by Senator Figueroa
(Coauthors: Senators Kuehl, Ortiz, and Romero)
(Coauthor: Assembly Member Jackson)

February 19, 2004

An act to amend Sections 1400, 1402, and 1403 of, and to add Section 1401.5 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1453, as amended, Figueroa. Employment: outsourcing.

Existing law precludes employers from ordering a mass layoff, relocation, or termination of an industrial or commercial facility employing a prescribed number of people, without first giving 60 days' notice to affected employees and specified government agencies. That law provides for civil penalties against an employer that fails to provide the required notices, and entitles employees who bring a civil action to enforce these provisions to recover attorney's fees at the discretion of the court.

This bill would require any employer ~~that~~ *who* outsources jobs that would result in the replacement of 20 or more workers in California to, not less than 60 days before ~~the employer enters into a contract with a contractor or subcontractor located outside the United States to perform the outsourced~~ *outsourcing the* job functions, give written notice ~~of the contract~~ to the Employment Development Department and the employees based in California whose jobs would be affected by the outsourcing.

The bill would provide for civil penalties against those employers who fail to provide the required notices and entitle employees who

bring a civil action to enforce these provisions to recover attorney's fees at the discretion of the court.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1400 of the Labor Code is amended to
2 read:
3 1400. The definitions set forth in this section shall govern the
4 construction and meaning of the terms used in this chapter:
5 (a) "Covered establishment" means any industrial or
6 commercial facility or part thereof that employs, or has employed
7 within the preceding 12 months, 75 or more persons.
8 (b) "Employer" means any person, as defined by Section 18,
9 who directly or indirectly owns and operates a covered
10 establishment. A parent corporation is an employer as to any
11 covered establishment directly owned and operated by its
12 corporate subsidiary.
13 (c) "Layoff" means a separation from a position for lack of
14 funds or lack of work.
15 (d) "Mass layoff" means a layoff during any 30-day period of
16 50 or more employees at a covered establishment.
17 (e) "Outsource" means the transfer by an employer whose
18 principal place of business is in California of job functions *from a*
19 *location within California to a contractor or subcontractor located*
20 ~~outside the United States.~~ *location outside the United States.*
21 (f) "Relocation" means the removal of all or substantially all
22 of the industrial or commercial operations in a covered
23 establishment to a different location 100 miles or more away.
24 (g) "Termination" means the cessation or substantial cessation
25 of industrial or commercial operations in a covered establishment.
26 (h) (1) This chapter does not apply where the closing or layoff
27 is the result of the completion of a particular project or undertaking
28 of an employer subject to Wage Order 11, regulating the
29 Broadcasting Industry, Wage Order 12, regulating the Motion
30 Picture Industry, or Wage Order 16, regulating Certain On-Site
31 Occupations in the Construction, Drilling, Logging and Mining
32 Industries, of the Industrial Welfare Commission, and the
33 employees were hired with the understanding that their

1 employment was limited to the duration of that project or
2 undertaking.

3 (2) This chapter does not apply to employees who are
4 employed in seasonal employment where the employees were
5 hired with the understanding that their employment was seasonal
6 and temporary.

7 (i) “Employee” means a person employed by an employer for
8 at least 6 months of the 12 months preceding the date on which
9 notice is required.

10 SEC. 2. Section 1401.5 is added to the Labor Code, to read:

11 1401.5. Any employer who outsources jobs that would result
12 in the replacement of 20 or more workers in California shall, not
13 ~~less than 60 days before the employer enters into a contract with~~
14 ~~the contractor or subcontractor to perform the outsourced job less~~
15 ~~than 60 days before outsourcing the job~~ functions, give written
16 notice ~~of the contract~~ to the Employment Development
17 Department and the employees based in California whose jobs
18 would be affected by the outsourcing.

19 SEC. 3. Section 1402 of the Labor Code is amended to read:

20 1402. (a) An employer who fails to give notice as required by
21 paragraph (1) of subdivision (a) of Section 1401 and Section
22 1401.5 before ordering a mass layoff, relocation, or termination,
23 or outsourcing jobs is liable to each employee entitled to notice
24 who lost his or her employment for:

25 (1) Back pay at the average regular rate of compensation
26 received by the employee during the last three years of his or her
27 employment, or the employee’s final rate of compensation,
28 whichever is higher.

29 (2) The value of the cost of any benefits to which the employee
30 would have been entitled had his or her employment not been lost,
31 including the cost of any medical expenses incurred by the
32 employee that would have been covered under an employee
33 benefit plan.

34 (b) Liability under this section is calculated for the period of the
35 employer’s violation, up to a maximum of 60 days, or one-half the
36 number of days that the employee was employed by the employer,
37 whichever period is smaller.

38 (c) The amount of an employer’s liability under subdivision (a)
39 is reduced by the following:

1 (1) Any wages, except vacation moneys accrued prior to the
2 period of the employer's violation, paid by the employer to the
3 employee during the period of the employer's violation.

4 (2) Any voluntary and unconditional payments made by the
5 employer to the employee that were not required to satisfy any
6 legal obligation.

7 (3) Any payments by the employer to a third party or trustee,
8 such as premiums for health benefits or payments to a defined
9 contribution pension plan, on behalf of and attributable to the
10 employee for the period of the violation.

11 SEC. 4. Section 1403 of the Labor Code is amended to read:

12 1403. An employer who fails to give notice as required by
13 paragraph (2) of subdivision (a) of Section 1401 or Section 1401.5
14 is subject to a civil penalty of not more than five hundred dollars
15 (\$500) for each day of the employer's violation. The employer is
16 not subject to a civil penalty under this section, however, if the
17 employer pays to all applicable employees the amounts for which
18 the employer is liable under Section 1402 within three weeks from
19 the date the employer orders the mass layoff, relocation, or
20 termination, or enters into the outsourcing contract.

